

**EXHIBIT O**  
**TO THE DECLARATION OF JOSEPH V. WILLEY**

**N.Y. DEP'T HEALTH, MEDICAID IN EDUCATION  
ALERT, ISSUE # 20-02: ADDENDUM (June 5, 2020)**



## NEW YORK STATE EDUCATION DEPARTMENT

### Medicaid

New York State Department of Health (DOH), Office of Health Insurance Programs (OHIP)  
 New York State Education Department (NYSED)  
 Preschool/School Supportive Health Services Program (SSHSP)  
 Medicaid in Education

#### Issue #20-02 : Addendum

**To:** All SSHSP Medicaid Providers

**From:** NYS DOH OHIP SSHSP & NYSED Medicaid in Education Unit

**Date:** June 5, 2020

**Subject:** **SSHSP Medicaid Alert 20-02 Addendum**

### Frequently Asked Questions on SSHSP Services During the COVID-19 State of Emergency

This guidance is specific to billing Medicaid for P/SSHSP services provided via teletherapy/telehealth during the COVID-19 emergency only. Additional COVID-19 emergency guidance specific to professions and special education requirements appear below:

[P-12 - Provision of Services to Students with Disabilities during COVID-19 Emergency](#)  
[Office of Professions – COVID-19 Guidance](#)

#### **A. Provider Qualifications**

**A1. Q. The [Alert](#) states it pertains to ALL Medicaid providers in ALL situations. Does this mean that OTA's that previously provided OT services in a school district under the supervision of an OTR can continue those services through telehealth methods during the current State of Emergency?**

**A.** Yes, telephonic/telehealth services will be covered by Medicaid when provided by a qualified SSHSP practitioner acting in accordance with scope of practice requirements, policies and guidance issued by NYS Education Department Office of Special Education. You may also refer to [NYS Office of Professions \(OP\) COVID-19 FAQs](#) for additional information.

**A2. Q. Can a certified teacher of speech and hearing handicapped (TSHH)/students with speech and language disabilities (TSSLD) provide service via teletherapy while under the direction (UDO) of an SLP, or must an SLP only provide speech therapy? [Medicaid Alert 20-02](#) states: Telephonic/telehealth communication will be covered when provided by a qualified SSHSP practitioner acting in accordance with scope of practice and policies and guidance issued by NYS Education Department Office of Special Education.**

**A.** Yes, telephonic/telehealth SSHSP services will be covered by Medicaid when provided by a qualified TSHH or TSSLD UDO a licensed SLP during the COVID-19 emergency. Relevant guidelines on the provision of related services through telepractice is available on the [NYSED OP](#) webpage.

#### **B. Billing/Claiming**

**B1. Q. Will there be any new CPT codes for billing Medicaid for SSHSP services delivered via telephone/telehealth?**

**A.** No, SSHSP providers will use existing SSHSP CPT codes for billing Medicaid.

View current CPT code listing on [Handout 5](#). Payment for services delivered via telephonic/telehealth during this emergency will be the same as if the services were delivered face-to-face.

- B2. Q. Since this message is referencing the Medicaid Update Special Edition, would SSHSP telehealth claims be expected to have the '95' modifier (in addition to the GP/GO/GN modifiers already used in SSHSP)?**

**A.** Yes, procedure code modifier '95' should be reported on SSHSP claims for services delivered via telephonic/telehealth. Current SSHSP procedure code modifiers 'GP', 'GO', 'GN', will be required for physical therapy, occupational therapy, and speech therapy, respectively, in addition to '95'.

- B3. Q. Do SSHSP claims for telephonic/telehealth services require Place of Service Code '02' as stated in Medicaid Update Special Edition: Comprehensive Telehealth Guidance posted on the [COVID-19 Guidance for Medicaid Providers](#) Health Department webpage? If no, what should they be using for 'Setting'?**

**A.** No, Place of Service code '02' will not be used on SSHSP Medicaid claims. There should be no change to bill type or service address reported on SSHSP Medicaid claims for services delivered during the emergency.

- B4. Q. Are group therapy services delivered via telehealth Medicaid reimbursable when the IEP and written order/referral are for individual therapy and vice versa?**

**A.** Yes, flexibility is being provided under the circumstances and the therapy sessions may be billed to Medicaid even though the written order/referral and IEP recommendations may differ regarding group versus individual services. Medicaid should be billed for the service actually provided.

- B5. Q. Does the [Alert](#) apply to students who are receiving Group Services or is this only for Individual Services?**

**A.** Both. Medicaid will reimburse telephonic or telehealth SSHSP services provided to Medicaid eligible students where services are provided remotely. See Q+A # B4 above for more information.

- B6. Q. I am a therapist. I was contacting you to see if you could answer some questions my colleagues and I had about the recent Medicaid Alert of what is reimbursable. Some of us were confused by #2 Video. Does this have to be live face to face video conferencing (it sounds like that is number 1) or is this referring to us making therapy based videos and sending it to parents and students to watch and complete when they can and then send back to us pictures/confirmations they did the activity, etc.**

**A.** There must be live interaction between the therapist and the student or Medicaid cannot be billed. There is no Medicaid reimbursement for videos, material packets, activities that are not completed during a live interaction between the therapist and the student.

- B7. Q. Does the SSHSP Medicaid 30-minute minimum speech treatment time still apply for telephonic/telehealth sessions for it to be billable?**

**A.** Yes, SSHSP [Q/A # 111](#) still applies. Speech therapy sessions less than 30 minutes may not be billed to Medicaid. However, Medicaid will relax the 30-minute minimum speech session treatment requirement for services delivered telephonically/via teletherapy, to the extent that the 30-minutes of treatment does not need to be continuous treatment time, for example it can be broken into three 10-minute sessions a day or two 15-minute sessions a day, and combined for one Medicaid billing unit.

- B8. Q. Due to the fact that students will not be in physical proximity to related service providers can you advise if DOH will be reimbursing for**

**sessions that may not meet 30-minute recommendation in the written order/referral and IEP?**

**A.** Medicaid will relax the treatment time requirements for services delivered telephonically/via teletherapy, to the extent that the treatment does not need to be continuous treatment time, for example if the written order/referral and IEP recommend 30-minutes of treatment a day, the treatment can be broken into three 10-minute sessions a day or two 15-minute sessions a day and combined for one Medicaid billing unit each day 30-minutes of treatment is provided.

- B9. Q. It may be unlikely that a provider can keep a student on the phone or an iPad in a live chat for a total of 30-minutes, which is the normal duration of a session as listed on an IEP. Do all current Medicaid billing guidelines still apply as far as frequency and duration as per the IEP? There won't be many services billed for if that is the case.**

**A.** Yes, Medicaid can only be billed for medically necessary services per the written order/referral. However, due to the COVID-19 emergency, Medicaid will relax the treatment time requirements for services delivered telephonically/via telehealth, to the extent that the treatment does not need to be continuous treatment time. For example, if the written order/referral and IEP recommend 30-minutes of treatment a day, the treatment can be broken into three 10-minute sessions a day or two 15-minute sessions a day and combined for one Medicaid claim each day 30-minutes of treatment is provided. The flexibility will apply to psychological counseling, speech therapy, occupational therapy, and physical therapy delivered telephonically/via telehealth during the COVID-19 emergency.

- B10. Q. With many parents limiting contact to text messaging and email - will DOH reimburse for text messaging and email contact with related service providers?**

**A.** No, text messaging and email contact with students or parents will not be reimbursable by SSHSP Medicaid.

- B11. Q. Some families may have more than one child that receives speech services in a group setting. Could a speech provider give speech to all the children at the same time, if the speech concerns were the same, and, even if they are not the normal speech therapist because the students are in different grades?**

**A.** Yes, telephonic/telehealth services will be covered by Medicaid when clinically appropriate and provided by a qualified SSHSP practitioner acting in accordance with scope of practice and with policies and guidelines issued by NYS Education Department Office of Special Education while working under COVID-19. However, if the SSHSP services are being delivered by a certified TSSH or TSSLD UDO a specific NYS licensed/registered SLP, the change in provider may affect UDO and may constitute a 'new' beginning of services for documentation purposes. Profession-specific relevant guidelines on the provision of related services through telepractice is available on the [NYSED OP](#) webpage.

- B12. Q. Will there be any changes to the group ratio requirements? Currently, SSHSP requires a group of 5 or less to bill 92508 for group speech therapy services.**

**A.** Pursuant to [section 200.6\(e\)\(3\) of the Regulations of the Commissioner of Education](#), the maximum group size for related services is 5 students. This requirement cannot be amended by Medicaid, see SSHSP [Q/A # 76](#). See Q/A # B4 above regarding billing Medicaid for individual or group therapy.

- B13. Q. Most of the students are struggling with the changes in their lives and live video chats or even phone calls can be confusing for some. If there are phone calls they usually last less than 5-minutes. For these students I have been consulting with parents, writing social stories and making videos related to their goals to help maintain skills. Is there a code I can bill for that?**

**A.** Phone calls lasting less than 5-minutes are not billable to Medicaid, nor are consultations with parents. SSHSP providers will use existing [SSHSP CPT codes](#) for billing Medicaid for clinically appropriate telephonic/telehealth services. Payment for services delivered via telephonically/via telehealth during this emergency will be the same as if the services were delivered face-to-face. See Q/A # B11 above for more information regarding treatment times.

**B14. Q. Regarding Medicaid Alert 20-02, can claims be submitted for preschoolers?**

**A.** Yes, [Medicaid Alert 20-02](#) applies to services provided to both preschoolers and school-age children receiving SSHSP reimbursable services.

**B15. Q. Will there be any flexibility to the rule for therapy sessions that are made up if the services provided exceed quantity and duration recommended in the IEP and written order/referral? For example, could Medicaid be billed for 5 30-minute speech therapy services provided during the next week when 2 per week are in the IEP and written order/referral?**

**A.** No, Medicaid may not be billed for services provided in excess of the frequency/duration on the IEP and written order/referral as per SSHSP [Q/A # 36](#) and [Medicaid-Alert 19-02](#).

**B16. Q. Will SSHSP providers be allowed to submit claims for services rendered during the COVID-19 emergency more than 15 months after the date of service?**

**A.** No. At this time the time limit for submission of claims rendered has not been extended. SSHSP providers must submit claims to Medicaid within 15 months of the date of service.

**B17. Q. How do we bill for therapy session activities sent through email or virtual platform? Would the time that the therapists would record in their Medicaid notes be the length of time it should take the student to complete the activities?**

**A.** No, sending activities for a student to complete will not be reimbursable by SSHSP Medicaid.

**B18. Q. Is there guidance on CPT code(s) and modifier for CPSE related services (Speech, PT, OT, SEIT)?**

**A.** Yes, please see Q/A # B1-B3 above regarding CPT codes and modifiers. Special Education Itinerant Services (also known as SEIT) services are not claimable to SSHSP Medicaid.

**B19. Q. Can weekend days and/or evening time therapy sessions be reimbursed by Medicaid?**

**A.** Yes, to the extent the sessions do not exceed the frequency/duration in the IEP and written/order referral.

**B20. Q. If a student is difficult to engage on screen due to whatever reason (i.e. age, cognitive level, attention span), would it be acceptable to coach the parent/guardian and have the parent do the interventions while the related service provider monitors and continues to coach throughout the session?**

**A.** Yes, because there is live interaction between the provider and the student and parent/guardian throughout the session it would be billable to SSHSP Medicaid.

**B21. Q. If the session is mostly consultation with the parent, should they enter that as a session billable to Medicaid?**

**A.** No, providing consultation to parents is not a reimbursable SSHSP service.

**B22. Q. Will asynchronous or "store and forward" services for speech therapy, occupational therapy, physical therapy reimbursable by**

## Medicaid?

**A.** No, asynchronous "store and forward" services are not reimbursable by Medicaid under the SSHSP.

### **B23. Q. There are some NYC students who have temporarily relocated out of state but are still receiving remote services from their NYC home provider. Can we bill for those services?**

**A.** Yes, during the emergency, SSHSP services provided to students temporarily residing out of state may be billed to Medicaid.

## **C. Documentation of Service**

### **C1. Q. Are IEP amendments needed to indicate telehealth delivery in order to bill Medicaid for telehealth?**

**A.** No, IEPs do not need to be amended to indicate telehealth delivery. Please see guidance issued by the NYS Education Department Office of Special Education for additional information regarding the provision of services to students with disabilities, [Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus \(COVID-19\) Outbreak in New York State](#).

### **C2. Q. Are existing orders/referrals for face-to-face services also valid for telehealth services?**

**A.** Yes, existing orders/referrals for face-to-face services are valid for telehealth services.

### **C3. Q. Will DOH be providing guidance on session notes - special codes, etc?**

**A.** Session notes must be created and kept in accordance with existing SSHSP policy. For services delivered telephonically/via telehealth during the emergency, the setting may be wherever the student is located when receiving services (e.g. home). The session note must also indicate if the service was delivered telephonically or via telehealth.

### **C4. Q. How do SSHSP servicing providers enter their notes into IEP Direct at this time? Would they enter their session note as usual? Would they need to use different codes? How about length of time?**

**A.** All telephonic/telehealth encounters should be documented in accordance with existing SSHSP policy. For services delivered telephonically/via telehealth during the emergency, the setting may be wherever the student is located when receiving services (e.g. home). The session note must also indicate if the service was delivered telephonically or via telehealth. Questions about vendor specific software questions/support should be address by the billing provider requesting your services.

### **C5. Q. Would providers enter their notes the same as if they were providing services in school?**

**A.** Yes, practitioners should generally enter session notes the same as if they were providing services in school. For services delivered telephonically/via telehealth during the emergency, the setting may be wherever the student is located when receiving services (e.g. home). The session note must also indicate if the service was delivered telephonically or via telehealth.

### **C6. Q. We have traditionally required documentation of a child's attendance in their center based (CB) program before we would bill Medicaid for the CB Related Service (CBRS) they had received. Is it a requirement that there be CB attendance in order to bill Medicaid for CBRS? If a child who is no longer in their CB program (due to COVID-19 closures) and is receiving CBRS via telehealth could we bill Medicaid for those services?**

**A.** Physical attendance at a CB program is not required during the COVID-19 emergency. Services will be covered by SSHSP Medicaid when clinically appropriate provided by a qualified SSHSP practitioner acting in accordance with scope of practice and policies and guidance issued by NYS Education Department Office of Special Education.

- C7. Q. We've always had an attendance sheet for our agency, with original signatures, for our Medicaid claiming. We know some of our parents are not going to return an attendance sheet but do feel they would take a photo of it and send that to our providers. In this situation, can we use a "copy" or photo of the attendance sheet for Medicaid claiming?**

**A.** Attendance sheets have not been and will not be required by DOH for Medicaid claiming under the SSHSP.

- C8. Q. We're trying to get our software setup to accommodate services delivered in accordance with [Medicaid Alert 20-02](#) and need to know if there will be information required for claiming such as: 1) new verbal consent, and 2) if recording, need to keep documentation?**

**A.** Written patient consent for services provided via telehealth is not required. The practitioner shall provide the member or legal representative with basic information about the services that he/she will be receiving via telehealth, and the member or legal representative shall provide his/her consent to participate in services utilizing this technology. This should be documented in the medical record. Telehealth sessions/services shall not be recorded without the member's or member's legal representative's consent. There will not be any new information to be provided on SSHSP Medicaid claims regarding consent, documenting consent, or recording.

- C9. Q. As we are preparing IEPs for the next school year we are finding it difficult to get signed written orders/referrals. Can a provider document that they intend to sign an order or referral today and actually sign the order/referral in the future? Can services provided before the written order/referral is actually signed be billed to Medicaid?**

**A.** Written orders/referrals for SSHSP reimbursable Medicaid services must be prospective. Refer to [SSHSP Provider Policy and Billing Handbook](#) for guidance.

- C10. Q. Is there guidance on how to obtain a caregiver signature for telehealth sessions?**

**A.** The SSHSP does not require signed assurance that the therapy occurred from each caregiver. Per [Medicaid Alert 20-02](#), written patient consent for services provided via telemedicine/telephonically is not required.

- C11. Q. Regarding co-signature requirements for UDO/USO. Will supervisors have more than the current 45 calendar days to co-sign and date each sessions therapy note?**

**A.** Yes, supervising clinicians will have 90 days to co-sign session therapy notes for SSHSP services provided during the COVID-19 emergency.

- C12. Q. In regard to HIPAA do we need a business associate agreement in place?**

**A.** During the COVID-19 nationwide public health emergency, a HIPAA-covered health care provider may use any nonpublic facing remote communication product that is available to communicate with patients to provide telehealth. Providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype, to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Providers should notify patients that these third-party applications

potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications. However, Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers. View the [HHS OCR Notice of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Public Health Emergency](#) for additional support.

If you have any questions or comments, please email the [NYS Department of Health](#), the [NYS Education Department Medicaid in Education Unit](#) or your local [regional technical support and assistance contact](#).